READ & STEVENS, INC.

IBLA 83-371; IBLA 83-372 Decided August 31, 1983

Appeal from decision by New Mexico State Office, Bureau of Land Management, rejecting high bid for competitive oil and gas lease NM 55126 and NM 55147.

Set aside and remanded.

1. Oil and Gas Leases: Competitive Leases--Oil and Gas Leases: Discretion to Lease

Where a competitive oil and gas lease high bid is not clearly spurious or unreasonable on its face and the record fails to disclose a sufficient factual basis for the conclusion that the bid is inadquate, the decision will be set aside and the case remanded for compilation of a more complete record and readjudication of the bid. A justification memorandum that does not reveal the estimated minimum value for the parcel and sufficient factual data cannot support rejection of the high bid for the parcel.

APPEARANCES: Norman L. Stevens, Jr., vice president, Reed & Stevens, Inc., Roswell, New Mexico; Robert J. Uram, Esq., Office of the Solicitor, Santa Fe, New Mexico, for Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Read & Stevens, Inc. (Stevens), appeals from two decisions by the New Mexico State Office, Bureau of Land Management (BLM), both dated January 31, 1983, rejecting Stevens' high bids of $17.76 per acre for parcels 14 and 35 offered at a competitive oil and gas lease sale held December 14, 1982. Stevens advances identical arguments, to the effect that the price bid by Stevens was adequate as to both parcels, in identical briefs filed in both these appeals. Both appeals are consolidated for purposes of decision because of the similarity of the issues involved. BLM has also treated the cases as though they involved identical issues, and identical briefs on behalf of BLM have been filed in answer to appellant, in which BLM asserts that disposition of this appeal is controlled by the decision in Read & Stevens, 70 IBLA 377 (1983). The only difference between the appeal involving parcel 14 and that involving parcel 35 is the location of the tract itself: parcel 14 is in an undesignated field in sec. 9, T. 24 S., R 29 E., New Mexico principal meridian, Eddy County, New Mexico. Parcel 35

is located in the Lusk field in sec. 22, T. 19 S., R. 32 E., New Mexico principal meridian, Lea County, New Mexico. Parcel 35 contains 80 acres; parcel 14 contains 280 acres. Reports from Minerals Management Service (MMS) recommended rejection of Stevens' bids as to both tracts based upon a determination the parcels were within a known geologic structure (KGS), because both parcels were located in proximity to a geologic formation known as the Morrow trend, and because the existence of producing wells in the vicinity, and other sales in adjoining parcels all indicated that Stevens' bid of $17.76 per acre was below the fair market value for each parcel. The evaluation by MMS as to parcel 14 considered sales in four adjoining sections ranging from $1,138.89 per acre to $47.56 per acre for oil and gas lease sales in 1981 and 1982. The MMS evaluation for parcel 35 considered four sales ranging in value from $62.50 (subsequently lowered to $11.25) to $2,153.82 per acre.

Stevens' statement of reasons in support of its appeal characterizes both parcels as "wildcat acreage," describes them as speculative, and characterizes the Morrow trend production to be of "poor quality" in the area of the two parcels. Stevens further justifies its identical bid for both tracts on the theory, assuming the parcels to be valuable only for purposes of speculation, that 10 hypothetical market and industry events must occur within the term of the lease in order to permit economic drilling. According to Stevens, these market variables were considered by the company when it prepared its bid, to include price, supply, demand, interest rate costs, leasing costs, and fluctuation of market and industry conditions. In the light of its analysis, Stevens argues that economic necessity dictates BLM should simply place a minimum price on any offered tract so that bidders will know whether it is worth their while to prepare bids for any given parcel. 1/ Stevens' argument is to the effect that BLM has incorrectly placed too much weight upon the fact these parcels are within a KGS merely because of the proximity

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1/ Compare, BLM Instruction Memorandum No. 83-575 dated May 27, 1983, Subject: Evaluation of Procedures Used to Determine the Adequacy of Bids Received for Competitive Oil and Gas Leasing. Comments to the methods proposed were solicited up until July 15, 1983. The Memorandum explains the request for comments thus:

"At the request of the Assistant Secretary for Land and Water Resources, the Bureau has, through the Division of Fluid Mineral Leasing, initiated an evaluation of the existing procedures used to determine bid adequacy and the formulation of new procedures or modification to existing procedures. In connection with this evaluation, comments regarding the existing procedures are requested. The comments should address one or more of the following:

"(a) General comments regarding the procedure presently employed.

"(b) Methods and procedures employed to calculate estimated tract valuation, including discounted cash flow (DCF) models and appraisal techniques (comparative valuation).

"(c) Methods and procedures used to evaluate bids received relative to the estimate tract value and/or fair market value, including point estimates derived through DCF models, comparability and factors to consider market value (average evaluation of tract, geometric average bonus bid and geometric average evaluation of tract).

"(d) Methods and techniques used to verify the presence (or absence) of competitive market indicators, such as bidding levels."

Appellant's arguments are based upon analysis using a discounted cash flow model such as BLM mentions in item (b).

of other producing wells, and has failed to compute into its calculation of fair market value other variable factors within the oil and gas marketplace over the term of the offered lease which ought to be considered as well. Stevens also contends that there has been no disclosure of the basis for decision in this case and that, under the circumstances, it is not possible to directly refute the basis for the decision to reject the two bids.

In Read & Stevens, Inc., supra at 381, this Board stated the standard against which appeals of rejections of high bid offers are to be considered:

> The Secretary of the Interior has discretionary authority to reject a high bid for a competitive oil and gas lease as inadequate. 30 U.S.C. § 226(b) (1976); 43 CFR 3120.3-1. This Board has consistently upheld that authority so long as there is a rational basis for the conclusion that the highest bid does not represent a fair market value for the parcel. Harold R. Leeds, 60 IBLA 383 (1981); Harry Ptasynski, 48 IBLA 246 (1980); B. D. Price, 40 IBLA 85 (1979). Departmental policy in the administration of competitive leasing program is to seek the return of fair market value for the grant of leases and the Secretary reserves the right to reject a bid which will not provide a fair return. Coquina Oil Corp., 29 IBLA 310, 311 (1977). See Exxon Co., U.S.A., 15 IBLA 345, 357-58 (1974).
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> The Board has consistently held that while BLM is entitled to place great reliance on MMS's technical expertise, the decision rejecting a high bid is that of BLM and, thus, BLM must analyze independently the question of sufficiency. William C. Welch, 60 IBLA 248 (1981); see also Southern Union Production, 51 IBLA 89 (1980); Steven Lutz, 39 IBLA 386 (1979).

A memorandum dated April 20, 1983, describes the analysis applied by BLM to the MMS evaluation in the case of parcel 14. The BLM reasoning is explained by the Acting Deputy State Director, who, after discussing the value of comparable sales in the vicinity, observes that:

> In the Statement of Reasons for Appeal from Read and Stevens, Inc., there are a number of factors listed as considerations for a business risk and a price of $17.76 per acre is offered. However, no specific data, either from sales or engineering estimates, are offered to support their bid.
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> Specifically * * * this tract is called a "wildcat." This tract is clearly identified as part of a Known Geologic Structure in the sale announcement. The appellant agrees with our estimate that the Morrow trend is within one mile of this tract. If there is a successful well in this section, the lessee of this tract will share proportionately in the well.

As concerns parcel 35, the Acting Deputy State Director, after again analyzing comparable sales in the vicinity of the parcel, explains the reasons for the BLM decision to reject Stevens' bid:

> Excellent Morrow and Strawn wells exist to the west of the parcel. A shallow dry hole is located in section 22-L just north of the parcel and a deep dry hole in section 22-D, about 3/4 mile north of the parcel, but it did not go to the Morrow (see attached map). The well in section 27-D, about 1/4 mile to the south produced only 190 MMCF of gas and 8,800 Bbls of oil from four formations before it was plugged and abandoned in 1978. Despite this, the parcel that included this well location is the one that drew a high bid of $649.90/acre. Our estimate of the fair market value (FMV) of this tract reflects the market conditions at the time of the sale and the current estimated potential for recoverable hydrocarbons. We use published sources for our information and derivations using standard estimation techniques.
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> In the Statement of Reasons for Appeal from Read and Stevens, there are a number of factors listed as considerations for a business risk and a price of $17.76 per acre is offered. However, no specific data, either from sales or engineering estimates, are offered to support the bid.

(Memorandum dated Apr. 20, 1983).

[1] Although, as BLM observes, Stevens has not presented evidence of value in support of its appeal, Stevens' analysis correctly points out that the company has not been offered an opportunity to examine the exact computations upon which the decision to reject its offer is based. Stevens criticizes the method used by the agency to reject its high bids, which, on their face do not appear improper. In the case of parcel 14, appellant's bid was the highest of three bids received. In the case of parcel 35, it was also the highest of three. While BLM rejected both bids for the stated reason that they were lower than the presale evaluation made by MMS, there is no indication in the record as to what exactly that presale evaluation was. Under the circumstances, as Stevens indicates, it is virtually impossible for the company to rebut the determination made, since it is, in fact, undisclosed. This situation is similar to that described in Glen M. Hedge, 73 IBLA 377, 379 (1983), where the Board observed:

> Herein, appellant's high bid is not spurious, and he has had no opportunity to refute the presale evaluations. Neither the presale evaluation nor method of calculation has been disclosed to appellant or this Board. We are unable to determine the correctness of the BLM decision without such information. This does not mean the Board will substitute its judgment for that of BLM in determining fair market value for the parcel, but rather that the Board will require sufficient facts and analysis to ensure that a rational basis for the determination is present. Snyder Oil Co., 69 IBLA 259 (1982); M. Robert Paglee, 68 IBLA 231 (1982).

As was the case in Hedge, this matter must obviously be remanded for readjudication of appellant's bid. When this computation is made by BLM it should be disclosed in detail and include the MMS calculations, so that, in the event BLM again rejects Stevens' bid, both the company, and this Board in the event of further appeal, are able to evaluate the specific

calculations used to evaluate the high bid for each parcel. See Edward L. Johnson, 73 IBLA 253 (1983).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside. This appeal is remanded to BLM with instructions to disclose upon the record and to appellant the exact computations used to determine the adequacy of the bids received for parcels 14 and 35.

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Franklin D. Arness
Administrative Judge
Alternate Member

We concur:

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R. W. Mullen
Administrative Judge

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Anne Poindexter Lewis
Administrative Judge